

Serial No. 09/760,949
Filed: January 16, 2001

REMARKS

Claims 1-13 were pending in the subject application.

Claims 1-12 are allowed.

Claim 13 stands rejected.

Claim 13 is amended.

Claim 13 is amended to adopt the Examiner's suggestion of adding "thereby producing antifungal activity" to overcome the rejection under 35 USC 112, second paragraph. It is Applicants' position that such an amendment is merely tangential to the claimed subject matter and is not deemed as narrowing with respect to any claim element. No new matter is added.

Double Patenting

Claims 1-12 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10 and 27-32 of copending application No. 09/765,846 (patent publication No. US 2001/0038824). Because this rejection is a provisional double patenting rejection, Applicants respectfully request withdrawal thereof should the claims be otherwise in condition for allowance.

Claim Rejection - 35 USC 112

Claim 13 stands rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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Applicants regard as the invention. More specifically, the Examiner deems claim 13 indefinite since it lacks essential steps in the method of prophylactic or therapeutic treatment of mycoses. While not acquiescing to the merits of the rejection, Applicants have adopted the Examiner's suggestion to use the phraseology "thereby producing antifungal activity" in the claim. Claim 13 has been amended to adopt the Examiner's helpful suggestion.

For these reasons, Applicants respectfully submit that claim 13 is definite, as amended. Reconsideration and withdrawal of the rejection of claim 13 under 35 USC 112, second paragraph, is requested.

Conclusion

Applicants thank Examiner Kam for the indication of allowed subject matter in claims 1-12. Applicants respectfully submit claim 13 is now in condition for allowance.

In summary, Applicants respectfully submit that the instant application is in condition for allowance. Early notice to that end is earnestly solicited.

If a telephone conference would be of assistance in furthering prosecution of the subject application, applicants request that the undersigned be contacted at the number below.

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No fee is required in connection with the filing of this Amendment. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,



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